burger (1900) 107 Ky. 469, 54 S. W. 829. Courts are not in agreement as to the degree of relationship required. But an apparent exception is made in the case of a message summoning a physician when there is a relationship between the sender and the person ill. *Western Union Tel. Co.* v. *Cavin* (1902) 30 Tex. Civ. App. 152, 70 S. W. 229; *Western Union Tel. Co.* v. *Haley* (1903) 143 Ala. 586, 39 So. 386. Respecting the intended parties to the message, recovery would have been possible in the instant case, but for the requirement that to hold the company liable, it must be charged with notice of the nature and urgency of the message. *Darlington* v. *Western Union Tel. Co.* (1900) 127 N. C. 448, 377 S. E. 479. In the principal case the court did not insist on such notice, on the ground that it was not the function of the telephone company to deliver the message, but merely to connect the wires. This reasoning seems unsatisfactory. To justify the result in the instant case on the ground of failure to establish notice, would harmonize better with the established limitations upon the unusual doctrine of mental anguish.

TORTS—INFANTS—ACTION FOR PRENATAL INJURIES.—The plaintiff's mother while walking along the public sidewalk during pregnancy fell through a coal hole, which had been negligently left open by the defendant. As a consequence the plaintiff while yet unborn was injured for life. *Held,* on demurrer, that the plaintiff could recover. *Drobner* v. *Peters* (App. Div. 1st Sept. 1920) 64 N. Y. L. J. 1503.

The instant case is an interesting and commendable development of the law. Heretofore the courts have universally held that an infant could not recover for prenatal injuries. (1913) 13 COLUMBIA LAW REV. 359 (where this point is fully discussed). The basis of these decisions is that the unborn child is not a separate entity and hence it is a fiction to treat it as a person *in esse.* But this reasoning falls short since the unborn child has already been considered a separate being in so many analogous cases in the law. (1913) 13 COLUMBIA LAW REV. 359. Bogg, J., in the dissenting opinion in *Allaire* v. *St. Luke's Hospital* (1900) 184 Ill. 359, 56 N. E. 638, 641, suggested that to avoid this fiction recovery should be allowed if, at the time of the injury, the child was capable of being born viable. See *Lipps* v. *Milwaukee Electric Ry. & Light Co.* (1916) 164 Wis. 272, 159 N. W. 916, 917. This rule, however, would raise the further difficulty of determining when a child could be born viable and also lead to the injustice of denying recovery to many infants, who, under the rule in the principal case, would be able to recover. The decision in the instant case is the logical result of *Nugent* v. *Brooklyn Heights R. R.* (1913) 154 App. Div. 667, 139 N. Y. Supp. 367, where the court denied recovery on the ground that the unborn child was not a passenger to the knowledge of the defendant, but apparently would have allowed recovery if the defendant had not been a carrier. It is to be hoped that the principal case will be upheld on appeal and followed in other jurisdictions.

TRIAL—SUBSTITUTION OF JUDGES.—In a prosecution for burglary, the presiding judge retired because of illness after hearing part of the evidence, and was replaced by another judge of the same county. The second judge finished the trial and instructed the jury, which declared the defendant guilty. No objection was made to the procedure until the trial was concluded, when the defendant raised this irregularity on a motion for a new trial. The Iowa Code provides for the exchange of judges, but does not expressly permit the substitution of one judge for another during the course of a trial. *Held,* one judge dissenting, such a change was permissible, there being no prejudice to the defendant, particularly since the defendant did not object at the time the substitution was made. *State* v. *McCray* (Iowa 1920) 179 N. W. 627.

In criminal cases a defendant may insist that the same judge preside from

the beginning to the end of the trial. *Durden* v. *People* (1901) 192 Ill. 493, 61 N. E. 317; *Freeman* v. *United States* (C. C. A. 1915) 227 Fed. 732; *Mason* v. *State* (1904) 26 Oh. Cir. Ct. 535. Even where there are several judges, the retirement of one in favor of a new judge, over the objection of the defendant, has been considered sufficient ground for ordering a new trial. *Blend* v. *People* (1870) 41 N. Y. 604. It has been held that in such cases the defendant may not waive his right to the continuous presence of the same judge. *Freeman* v. *People, supra;* see *Turberville* v. *State* (1879) 56 Miss. 793, 799; *cf. Low* v. *United States* (C. C. 1909) 169 Fed. 86; *contra, York* v. *State* (1909) 91 Ark. 582, 121 S. W. 1070. The importance of having one judge sit throughout the trial lies in the opportunity thus afforded him personally to observe the witnesses. A mere reading of the record is no equivalent of this. 2 Wigmore, *Evidence* (1905) §§ 946, 1395. A judge should be familiar with all the evidence to be in a position to instruct the jury, decide that a verdict is against the evidence, hear a motion for a new trial, *etc.* It may be said that a succeeding judge can familiarize himself with the evidence, not only by referring to the record, but by recalling the witnesses. See *York* v. *People supra,* p. 587. But it is difficult to reproduce the exact testimony of the trial. Whether the defendant should be able to waive his right to the continuous presence of the judge may be questioned on the ground that the state, being interested in safeguarding the liberty of its citizens, is also concerned in having a trial conducted in the proper form. See *Freeman* v. *United States, supra,* p. 786. However, since the state permits a prisoner to waive certain rules of evidence laid down for his defense, it may be argued that the defendant should be allowed to waive such an irregularity as was present in the instant case.

TRUSTS—PURCHASE FOR VALUE—ANTECEDENT DEBT.—A, the employee of B, misappropriated B's money and with it purchased stock which he pledged with the defendant as collateral security for an antecedent debt. The trustee in bankruptcy of B brings this action in equity to recover the stock. *Held,* the plaintiff may recover since the defendant is not a purchaser for value. *Millard* v. *Green* (Conn. 1920) 110 Atl. 177.

In the common law of sales one who takes a *res* in payment of an antecedent debt is not a *bona fide* purchaser according to the prevailing view. *Schloss* v. *Feltus* (1895) 103 Mich. 525, 61 N. W. 797; *Sleeper* v. *Davis* (1885) 64 N. H. 59, 6 Atl. 201; *contra, Leask* v. *Scott* (1877) 2 Q. B. 376. Equity has not followed the majority view of the common law in this respect. *Schulter* v. *Harvey* (1884) 65 Cal. 158, 3 Pac. 659; *contra, Lillibridge* v. *Allen* (1897) 100 Iowa 582, 69 N. W. 1031. Logically it seems that one who takes a *res* in extinguishment of a debt should under all circumstances be considered a purchaser for value unless a mere promise cannot constitute value. But since no promise is given, there is obviously no ground upon which a creditor, who has taken a *res* merely as collateral security for a debt, can be considered a purchaser for value. *Reid* v. *Bird* (1900) 15 Colo. App. 116, 61 Pac. 353 (law); *Adams* v. *Vanderbeck* (1896) 148 Ind. 92, 45 N. E. 645 (equity). However, in the law of bills and notes one who takes an instrument as collateral security for a debt has been considered a purchaser for value. *Brooklyn City & N. B. Co.* v. *National Bank of the Republic* (1880) 102 U. S. 14; see *Swift* v. *Tyson* (1821) 16 Pet. 1; *contra, Bay* v. *Coddington* (N. Y. 1821) 5 John. Ch. 54. If a promise is value,—and it is so defined in § 25 of the Negotiable Instruments Law and § 76 of the Sales Act,—then one who takes a *res* in extinguishment of a debt or promises to extend time of